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IN THE
Supreme Court of the United States

October Term, 1961
No. ~~1961~~ 117

IN THE MATTER
of
JOHN W. SOERGEL, THOMAS MAFRICI, LEO R. PRIEST, THOMAS CRANDALL, CARMEN FERRANTE, CHARLES TEDESCO and the BOARD OF TRUSTEES OF UNION FREE SCHOOL DISTRICT NO. 6,

Appellants,

—*vs.*—

JAMES E. ALLEN, as Commissioner of Education of the State of New York,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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Appellants,

—*vs.*—

JAMES E. ALLEN, as Commissioner of Education of the State of New York,

Appellee.

On Appeal From The Court Of Appeals
Of The State Of New York

Jurisdictional Statement

Appellants appeal from the final judgment of the Court of Appeals of the State of New York, entered in this proceeding on January 5, 1961, affirming an order of the Ap-

pellate Division of the Supreme Court of the State of New York, Third Department, entered on August 7, 1960, which affirmed an order of the Supreme Court of the State of New York, Albany County, entered in Albany County on September 2, 1959, dismissing the petitions herein. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the New York Supreme Court, Albany County, is not yet reported. The opinion of the Appellate Division is reported in 10 A. D. 2d 767, 197 N. Y. S. 2d 635. The affirmance of the Court of Appeals is reported in 9 N. Y. 2d 633, 210 N. Y. S. 2d 233. Copies of the opinion and order of the Supreme Court, Albany County, the opinion and order of the Appellate Division, and the judgment and remittitur, as amended, of the Court of Appeals are printed in Appendix A hereto.

Jurisdiction

This proceeding was brought under Article 78 of N. Y. Civil Practice Act, to set aside or modify an order of the Commissioner of Education of the State of New York. The order of the Appellate Division, affirming the order of the New York Supreme Court, Albany County, dismissing the petitions, was affirmed on January 5, 1961, by the Court of Appeals. A notice of appeal was filed in the New York Supreme Court, Albany County, on March 29, 1961. The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Section 1257 (2). The fol-

lowing decisions sustain the jurisdiction of the Supreme Court to review on appeal the judgment in this case: *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church*, 344 U. S. 94; *Chesebro* v. *Los Angeles County Flood Control Dist.*, 306 U. S. 459; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282.

Statutes and Constitutional Provisions Involved

Chapters 518 and 626 of N. Y. Laws of 1926; Art. 37, sec. 1801 of N. Y. Education Law; and, the pertinent provisions of the 14th Amendment of the Constitution of the United States are set forth in Appendix B hereto.

Questions Presented

May a State require the residents of an area to support a local school system by local real estate taxes where the area can have no need for the school system and can derive no benefit from it — without the rights of these residents under the Due Process and Equal Protection clauses of the Fourteenth Amendment being denied?

As is shown more fully in the Statement of this Case, *infra*, under the circumstances here, the question may be stated more particularly as follows:

Where a school district has now, and will continue to have, a public school system available to it by act of the New York Legislature (as payment for the loss of other district property), may the Education Law of New York, and the statutes under which the school system was provided, be construed to empower and allow the Commissioner of Education of New York to require the district to support a second, superimposed, school system — for which the district has no need and from which the district can derive no benefit — without such construction violat-

ing the Due Process and Equal Protection clauses of the Fourteenth Amendment by subjecting the residents of the district to a tax without benefit.

Statement of Case

Before April, 1926, Union Free School District No. 6, Town of DeWitt, County of Onondaga, State of New York, was a large school district. The Village of Eastwood, which adjoined the City of Syracuse, made up most of the District; the remainder was located in the Town of DeWitt. The District had its own adequate school system and owned its own school building, located in Eastwood.

In 1926, the Village of Eastwood, and some parts of the remainder of the District, were annexed to the City of Syracuse by act of the New York Legislature. N. Y. Laws of 1926, Chapters 518 and 626.

There remained an unannexed portion of the District, a thin crescent-shaped parcel hugging the eastern boundary of Syracuse. This unannexed portion became a "separate and distinct school district until changed according to law" under the annexation statutes. N. Y. Laws of 1926, Chapter 518, sec. 2, and Chapter 626, sec. 6. That unannexed portion is the present Union Free School District No. 6, Town of DeWitt, County of Onondaga, State of New York (hereafter called "District No. 6").

Under the annexation statutes all real and personal property belonging to the District and located in the portion annexed became the property of the City of Syracuse. N. Y. Laws of 1926, Chapter 626, sec. 4. But although the District's only school building was thus lost to the City of Syracuse, District No. 6 remained obligated to pay its proportional share on the bonds issued for the construction of it, under a formula set up by the annexation

statutes. N. Y. Laws of 1926, Chapter 518, sec. 3, and Chapter 626, sec. 3.

The general plan of annexation was completed by section 2 of Chapter 518 which provided:

> "The board of education of the city of Syracuse shall upon request grant permission to children residing in the part of such school districts [sic] not annexed, to attend schools under the care and control of the board without the payment of any tuition therefor."

After the annexation District No. 6 continued to function and assessed upon the real property of the district the taxes necessary to meet the school expenses of the district.

On June 10, 1957, the Commissioner of Education of the State of New York established a central school district by order pursuant to N. Y. Education Law, Art. 37 (and particularly section 1801 thereof). District No. 6, along with twelve other school districts, was included in the central system laid out by the Commissioner's order.

The order laying out the central school district did not purport to otherwise effect the rights and obligations of District No. 6. It made no provision concerning the right of the District's children to attend Syracuse schools tuition free; it made no provision concerning the bonded indebtedness of the District on the school which had been lost to the city — whether already paid, or then-owing.

Under the plan of centralization, the other twelve school districts involved were to have their school system merged into the central system. District No. 6, however, on the face of the order, was to continue to have the public schools of Syracuse as its own schools.

And in the briefs of Respondent in the New York Courts, it was conceded that "the inclusion of District No. 6 in the proposed central school district will not effect the

right of any pupil to attend the Syracuse schools without tuition if he cares to take advantage of that right." (Respondent's Brief, Appellate Division, p. 9; Respondent's Brief, Court of Appeals, p. 9.)

In effect, then, the order of the Commissioner of Education simply gave a second school system to District No. 6. The Syracuse schools remained, and the Districts right to use them continued.

Appellants John W. Soergel, Thomas Mafrici, Leo R. Priest, Thomas Crandall and Carmen Ferrante, with others, began a proceeding under Article 78 of N. Y. Civil Practice Act on June 25, 1957. Their petition sought to set aside or modify the order of the Commissioner, to the end that District No. 6 would be excluded from the proposed central district.

Among the grounds for setting the order aside was the following:

> "21. The action of the Commissioner of Education in including Union Free School District No. 6 as a part of Central District No. 1 * * * is unconstitutional in that it deprives petitioners and other taxpayers of Union Free School District No. 6 of their property without due process of law and in that it impairs the obligation of contract and in that it amounts to administrative repeal of Chapters 518 and 526 [sic] of the Laws of 1926 which were enacted for the benefit of your petitioners and persons similarly situated." (Petition of Petitioners, par. 21, pp. 13R-14R *.)

This contention was supported by allegations that: District No. 6 had the right to free education for its children in Syracuse schools (Petition of Petitioners, pars. 5, 8, pp. 8R-10R, 11R); including the District in a central district would materially increase its taxes (Petition of

* This and similar references are to the pages of the Record herein, as indicated on the lower right margin of the pages thereof.

Petitioners, pars. 6, 11, pp. 10R-11R, 12R); and, there would be no benefit received for the tax burden created (Petition of Petitioners, par. 20, p. 13R).

The petition of Appellants Charles Tedesco and the Board of Trustees of Union Free School District No. 6, with others, as intervening petitioners, again showed that District No. 6 had the right to free education in Syracuse schools for its children (Petition of Intervening Petitioners, pars. 11, 12a, pp. 32R-33R); that all educational needs were being met under the then-existing educational program (Petition of Intervening Petitioners, par. 12d, p. 34R); that inclusion of the District in the central district would increase its tax obligations (Petition of Intervening Petitioners, pars. 14, 17, pp. 37R-38R); and, that it followed that the residents of the District would receive no benefit for the taxes they would thus incur (Petition of Intervening Petitioners, par. 18, pp. 38R-39R). The order of the Commissioner was therefore attacked as unconstitutional (Petition of Intervening Petitioners, par. 18, pp. 38R-39R).

All the Appellants here are residents and taxpayers of District No. 6.

The decision of the New York Supreme Court stated that petitioners and intervening petitioners

> "also contend that his [the Commissioner's] order, in effect, repeals Chapters 518 and 626 of the laws of 1926, thereby depriving petitioner and other taxpayers of Union Free School No. 6 of their property without due process of law and impairs the obligation of contract; which by virtue of such chapters of the law was created for the benefit of the taxpayers of such district." (2a *.)

* This and similar references are to the pages of the appendix hereto.

The section of the Education Law under which the Commissioner acted (Section 1801) was held to place no limitation on his power to lay out central school districts

> "except that he shall include therein only territory 'of suitable size conveniently located for the attendance of pupils and having a sufficient number of pupils for the establishment of a central school,' and shall not include therein a city school district in a city of a given population." (4a.)

Under this construction of the Education Law the New York Supreme Court decided that the problem of the increased taxes the District would have to pay was no bar to centralization although the District would receive no benefit for the extra taxes.

The New York Supreme Court held that District No. 6 could be required to support a second district — the central district — while an earlier-established school system continued to operate.

Appellants briefed and argued their constitutional objections to the decision of the New York Supreme Court in their appeal to the Appellate Division. They contended that the construction of N. Y. Laws of 1926, Chapters 518 and 626, made below violated the Fourteenth Amendment by requiring the residents of the District to support a school system in addition to the one provided under the Laws of 1926. (Appellants' Brief in Appellate Division, Point III C.) Loss of equal protection of the laws was claimed.

They also contended that they were being deprived of property without due process under such a construction because District No. 6 was being put into a school district from which it could derive no possible benefit. (Appellant's Brief in Appellate Division, Point III D.)

The order of the New York Supreme Court, dismissing the petitions on the merits, was affirmed by the Appellate Division.

Appellants carried their constitutional objections to the Court of Appeals. There, in Point III C of their Brief, they argued that the construction of N. Y. Laws of 1926, Chapters 518 and 626, deprived them of due process of law and of the equal protection of the laws. In Points V and VI it was argued that the construction of Article 37 of the Education Law — that it authorized the inclusion of the District in a central school district in spite of the continuing right to free education in Syracuse schools — also violated the Due Process and Equal Protection clauses of the Fourteenth Amendment.

The Court of Appeals affirmed without opinion (14a-16a). In its amended remittitur, the Court of Appeals stated:

> "Upon the appeal herein there were presented and necessarily passed upon questions, under the Constitution of the United States, as follows: Appellants contended that Chapters 518 and 626 of the Laws of 1926 and Article 37 of the Education Law of the State of New York as interpreted by the Commissioner of Education and construed by the Courts of this State denied them equal protection of the laws and deprived them of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. This Court held there was no such denial or deprivation." (18a.)

The Questions are Substantial

The issue in this case is whether there are any limits at all on the power of the State to act in the name of public education.

If the power of the State is absolute — if the State may do as it chooses so long as an effect of its activity is to

provide schools for the children of its citizens — then Appellants have no right to be before this Court.

But if the State's power has some limits, Appellants believe their case must be heard.

Without a clear statement of the basic limitations of State power — now — it seems certain that wrongs like those done to Appellants here will be repeated.

Appellants submit that there must be at least one limitation on the power of the State to provide for education. The State must fairly balance the interests of its citizens in education against the interests of its citizens in the preservation of their property. In the terms of a more common test, the State must provide a real benefit in return for the taxes it extracts — for education as for any other governmental activity. *Wisconsin* v. *J. C. Penney Co.*, 311 U. S. 435, 444; Antieau, *Commentaries on the Constitution of the United States* (1960), p. 98; see 2 Cooley, *Constitutional Limitations* (8th ed. 1927) Ch. 14, pp. 1026, 1029.

The State of New York goes about the job of providing funds for education by taxation on two levels. It obtains revenue from various State-wide levies. N. Y. Tax Law, Arts. 9, 9-A, 9-B, 9-C, 11, 12, 12-A, 16, 16-A, 18, 19, 20, 21. A part of the revenue received is distributed to the schools of the State. N. Y. Constitution, Art. 11, sec. 1; N. Y. Education Law, Art. 73 (see, especially, sec. 3601 to sec. 3603-a). The benefit each citizen of the State receives, as a citizen of the State, is a roughly uniform educational system in which no particular area suffers because of a relative lack of wealth.

On the local level, the citizen is responsible to the school district in which he resides. The realty of each district is taxed to provide support for the conduct of the school system in the district. N. Y. Constitution, Art. 8, sec. 10;

N. Y. Education Law, Art. 41, sec. 2022; N. Y. Education Law, Art. 71, secs. 3501 (1) and 3502 (1). The benefit that the resident of the district receives, as a resident of a particular locality, is the excellence of the specific school system in his locality.

Appellants here reside in District No. 6. This District, as a result of the passage of statutes by the Legislature of the State of New York, has the schools of the City of Syracuse for its school system. N. Y. Laws of 1926, Chapters 518 and 626. These same statutes fixed the obligations of the residents of the District for support of this school system.

And the Syracuse schools will continue to be available to the children of the residents of the District indefinitely. (Opinion of the New York Supreme Court, 6a; Opinion of Appellate Division, 12a.)

The Commissioner of Education, at some time around 1956, determined that District No. 6 was not paying enough taxes for the support of education. He therefore decided to include the district in a plan of centralization because

> "in order to provide an adequate tax base for sound financing [of the central district], it is necessary to include all of the territory of the proposed central district including District No. 6." (Affidavit of James E. Allen, p. 5, p. 57R.)

The Commissioner, by including District No. 6, set about adjusting the tax burdens of the District so that they would be, in his view, more equitable.

The Commissioner's reading of N. Y. Education Law, Art. 37, was that he had the power to do such a thing in spite of the provisions of N. Y. Laws of 1926, Chapters 518 and 626. The courts of the State of New York have upheld his construction of these statutes.

But what this action by the Commissioner of Education means is that the Appellants here, and the other residents of the District, have been saddled with a new and entirely unwarranted tax burden in the name of education. They have been ordered to support a second school system; to carry the burden of public schools other than their own.

This tax is not a State tax. It is to be levied upon only the residents of this District, not upon all the citizens of the State.

Appellants believe that the situation they have been placed in by the proposed centralization is factually the same as that in *Paducah-Illinois R. R.* v. *Graham*, 46 F. 2d 806 (W. D. Ky.). There a school district was formed which included a parcel of land under the Ohio River. The only improvement on this land was plaintiff's railroad bridge. The bridge was assessed at a value equal to three-quarters of the entire assessed valuation of the district. The Court concluded, at 46 F. 2d 810:

> "If the inclusion of plaintiff's railroad bridge in the taxing district is so unnatural and so unreasonable as clearly to show that the sole purpose of the inclusion was to add to the taxable value of the property in the district, such inclusion would amount to spoilation and the taking of plaintiff's property without due process of law. The primary idea in the consolidation of school districts is to furnish a more efficient system of common schools to the people of the district. There could be no valid purpose in creating a consolidated district where there were no pupils to be served."

There are no pupils to be served in District No. 6, for the school system of the District continues.

It has never been questioned that the Syracuse schools are adequate for the needs of the District. Nor has it been suggested that a central school would be superior educa-

tionally to the City schools. The important fact, however, is that the City schools will continue to be open to the children of the District, and not that they are, on balance, better schools than the proposed central school.

For it is the clear purpose of the Education Law that each school district will provide *one* school system. If the district is centralized, it ceases to be, and is merged into the central district. Its schools become a part of the central school system. See, N. Y. Education Law, Art. 37.

This fact makes the real estate taxes imposed by school districts in the State of New York much like local improvement taxes. The benefit which they — like all taxes — must confer is special because it is local. Something tangible, of value to the one school system of the district, must be produced within the district itself.

In *Kansas City So. Ry.* v. *Road Improvement Dist. No. 6*, 256 U. S. 658, a road district had been created under an Arkansas statute in a rural area of the state. Plaintiff's property — about 10 miles of track, with a right of way and buildings — was assessed at $7,000 per mile for its share of the costs of building a road in the district. Privately owned property was assessed according to a zone classification, with the land nearer the road bearing a heavier tax than land farther removed from it.

Plaintiff attacked the state statute as violating the Fourteenth Amendment. The Arkansas courts held the statute valid; the Supreme Court reversed. The Supreme Court pointed out that the Railway had been assessed according to "vague speculation as to present worth and possible future increased receipts * * *." (256 U. S. at 660) The Court stated:

> "If, however, the statute providing for the tax is 'of such a character that there is no reasonable presumption that substantial justice generally will be

done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred the law cannot stand against the complaint of one so taxed in fact.' Gast Realty Co. v. Schneider Granite Co., supra [240 U. S. 55, 59]." (Matter in brackets added.) (256 U. S. at 660)

In *Thornton* v. *Road Improvement Dist. No. 1*, 291 Fed. 518 (C. C. A. 8th Cir.), app. dism. 269 U. S. 592, a road district was formed in Arkansas, and assessments for proposed roads were made. Then a new road was proposed to be partly within the district already formed and partly outside it. A special law was passed by the Arkansas Legislature charging the entire cost of the new road against the property outside the already formed district. That property belonged to certain nonresidents who became the plaintiffs in the case.

Plaintiffs' suit for relief from the tax was dismissed on the merits below. The Circuit Court of Appeals reversed, holding that the assessments violated the Fourteenth Amendment. The Circuit Court pointed out that the part of the road within the already formed district was of no benefit whatsoever to the area being taxed (the area outside the district). The taxes were consequently arbitrary and grossly excessive.

In *Risley* v. *City of Utica*, 168 Fed. 737 (N. D. N. Y.), a special tax was involved. The State of New York authorized the City of Utica to contract to supply water within its limits, and to collect the necessary moneys by taxation. Plaintiff sought to enjoin the collection of the tax on the grounds that it violated the Fourteenth Amendment. A demurrer by the City was sustained on the ground that the jurisdictional amount was not in controversy. But the Court stated, at pages 747 to 748, that the tax violated the Constitution because it extracted money from plaintiff

without there being any return given him. (Plaintiff's property was not serviced by any water main.)

In *Myles Salt Co.* v. *Board of Commissioners*, 239 U. S. 478, plaintiff's property was included in a drainage district although it was so situated that it could not possibly face any danger of flooding. A finding of no cause of action below was reversed and the case was remanded with the Court stating at 239 U. S. 485:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation."

No benefit will come to District No. 6 as a result of the proposed centralization. The District will be paying for another locality's school system. All it will receive for this will be the privilege of forsaking the schools it now has and will continue to have.

Appellants believe that there is nothing about their District that justifies it being burdened with the obligations of a second local school system. They can see no reason why they should have some special sort of communital responsibility to other school districts in the State that no other group has. They submit that they have been deprived of their property by the construction of the Education Law and the Laws of 1926 made by the New York Courts which has opened them to this double liability.

They submit that the carefully drawn Laws of 1926 — providing free education as consideration for the taking of the District's school and the continuing obligation of the District to pay on the bonds issued for construction of

the school — become a fraud under such a construction. The taking becomes one without recompense.

And they submit that they have been put into a special classification as a result of these constructions. On the principle of *Quaker City Cab Co.* v. *Pennsylvania*, 267 U. S. 389, this classification is palpably unreasonable. Because they have been so classified, Appellants submit that they have been denied the equal protection of the laws. See *Louis K. Liggett Co.* v. *Lee*, 288 U. S. 517.

If the Commissioner of Education has the power under the Education Law to indulge in what might be called spot tax equalization here, then he has the power to do it elsewhere. There is no reason why a school district in suburban Long Island cannot be required to "adopt" a less favored district in the Bronx, or Buffalo. For if this action of the Commissioner of Education can free the State of New York from the troublesome task of equitably distributing the burden of its taxes under the circumstances here (see, *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550, 560) — there will be no case where the same thing cannot again be done.

Appellants believe that the questions presented by this case are substantial and that they are of public importance.

Respectfully submitted,

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APPENDIX A.

Opinion of New York Supreme Court.

SUPREME COURT—County of Albany.

In the Matter of the Application
of
JOHN W. SOERGEL, et al.

(Albany County Special Term, May 22, 1959)
(Justice William Deckelman, Presiding)

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MEMORANDUM

DECKELMAN, J.

This is a proceeding pursuant to Article 78 of the Civil Practice Act for an order reviewing, vacating or modifying an order made by James E. Allen, as Commissioner of Education of the State of New York, purporting to lay out Central School District No. 1 of the Towns of DeWitt, Manlius and Cicero, Onondaga County, and Sullivan, Madison County, dated June 10, 1957.

The proceeding was originally returnable at Special Term, Albany County on July 26, 1957, and for reasons set forth in the papers submitted was adjourned by stipulation and was finally brought on at Special Term, Albany County, on May 22, 1959, at which time certain residents

and taxpayers of common School District No. 3 of the Town of DeWitt and of Union Free School District No. 6 of the said Town of DeWitt petitioned for an order permitting them to intervene and have their petitions considered in this proceeding.

It appears that on June 10, 1957 the said Commissioner of Education made an order laying out Central School District No. 1 of the Towns of DeWitt, Manlius and Cicero, Onondaga County, and Sullivan, Madison County, in pursuance of Article 37 of the Education Law, and that on April 25, 1959, the voters of such centralized District approved the organization of such central school district.

The contention of the petitioners, as well as that of the proposed intervenors, is that the Commissioner of Education in laying out such Central School District exceeded the power conferred upon him by Statute and in so doing was capricious and arbitrary.

They also contend that his order, in effect, repeals Chapters 518 and 626 of the laws of 1926, thereby depriving the petitioner and other taxpayers of Union Free School No. 6 of their property without due process of law and impairs the obligation of contract; which by virtue of such chapters of the law was created for the benefit of the taxpayers of such district.

The powers of the Commissioner to lay out and control School Districts are set forth in Section 1801 of the Education Law which is as follows:

Sec. 1801. FORMATION AND CHANGES OF CENTRAL SCHOOL DISTRICTS.

1. The commissioner of education is hereby authorized and empowered to lay out central school districts for the establishment of central schools to give instruction in elementary or elementary and high school subjects and to fix, determine and define the boundaries of said districts as hereinafter provided.

2. The commissioner is authorized and empowered to make and enter in his office orders laying out territory in new central school districts or annexing to existing central school districts territory not contained within a city school district in a city having a population of more than ten thousand inhabitants, and not contained within a city school district having a full valuation of taxable real estate per public school pupil residing in the district of more than fifteen thousand dollars; provided, however, that no territory contained within a city school district in a city having a population of ten thousand inhabitants or less may be included in new central school districts or annexed to existing central school districts after July first, nineteen hundred fifty-five. The commissioner in laying out such central school districts and in fixing and defining the boundaries thereof shall include only territory of suitable size conveniently located for the attendance of pupils and having a sufficient number of pupils for the establishment of a central school. The commissioner shall designate all central school districts by name, number and such other description as he shall deem proper.

3. Within ten days after the making and entry of the order pursuant to this section, the commissioner shall transmit a certified copy thereof to the clerk, or in the event there is no clerk, to the trustee or trustees of each school district the territory of which is affected by said order. The clerk, the trustee or trustees, as the case may be, shall, within five days after receipt of such order, post a copy thereof in five conspicuous places in such district.

4. No central school district laid out by order of the commissioner shall operate as a central school dis-

trict, nor be entitled to receive the benefits of a central school district until it has been organized by the qualified voters of the district in accordance with the provisions of this article, provided, however, a central school district which was organized prior to April seventh, nineteen hundred forty-four, or pursuant to the provisions of this section and to which territory may be annexed shall not be required to again organize."

I find no limitation or restriction in the statute of the Commissioner's power to establish central school districts and to fix and determine boundaries, except that he shall include therein only territory "of suitable size conveniently located for the attendance of pupils and having a sufficient number of pupils for the establishment of a central school," and shall not include therein a city school district in a city of a given population. In his discretion, he may lay out new central school districts embracing the territory of common school district, Union Free School Districts and Central School Districts, except within certain municipalities whose population is less than 10,000 inhabitants.

The section does not prohibit the laying out of a central school district because one of its component parts will have an increased tax rate nor does it limit its establishment because a school system and program is satisfactory to its inhabitants and is in effect in an existing district, the territory of which is taken by the order. The determination of the boundaries of central school districts which necessarily involves the grouping of existing districts and educational soundness of their creation, subject only to the indirect approval of his act by the qualified voters of the created district, are left to the discretion of the commis-

sioner and will not be disturbed if not arbitrarily and capriciously exercised.

See *Gardner* v. *Ginther*, 232 A. D. 296, affirmed 257 N. Y. 578.

Petitioner's objection to the creation of the district is based upon the fact that it includes Union Free School District No. 6 of the Town of DeWitt and the parties who move to intervene seem to object only to the inclusion of such District and Common School District No. 3 of the Town of DeWitt.

The reasons for such objection in so far as Union Free School District No. 6 is concerned is that the legislature in 1926 enacted Chapter 518 and Chapter 626 of the laws of 1926 which in effect provide that a portion of Union Free School District No. 6 be annexed to the City of Syracuse and that portion not annexed shall continue as a Union Free School District until changed by law, and that such remaining district shall pay its proportionate share of the existing bonded indebtedness.

Chapter 518 also provides that the Board of Education of the City of Syracuse shall upon request grant permission to children residing in the part of such district not annexed to attend school under the care and control of the board without payment of tuition.

Both petitioners and the proposed intervenors contend that the inhabitants of their respective districts are almost unanimously opposed to the centralization and are satisfied with present educational facilities and that including such districts will greatly increase the taxes for educational purposes in the respective districts.

It appears that the Commissioner in his determination followed the master plan for school district reorganization in New York State which was recommended by the joint

committee of the Legislature. (New York State Legislature Document 1947, No. 25) except in instances where districts had been consolidated or had been annexed to another district. While the Commissioner was not required to abide by the findings of that committee, the fact that he did impress me that his act was not arbitrary or capricious.

Chapters 518 and 626 of the laws of 1926 in my opinion are not affected by the order of June 10, 1957. That portion of Union Free School District No. 6 not annexed to the City of Syracuse continued as a School District until changed according to law.

So far as increased taxation is concerned, see *In Re School District 3 Town of Oyster Bay* v. *Allen*, 6 A. D. 2nd 316, affirmed by Court of Appeals May 29, 1959.

So far as the wishes of the inhabitants of the districts as to centralization and the fact that they are satisfied with present educational facilities, see above in *Re School District 3 Town of Oyster Bay* v. *Allen*, 6 A. D. 316, affirmed by Court of Appeals May 29, 1959.

The fact that, as contended, such districts are in proximity to Syracuse does not make them City Districts. They were Union Free School and Common School Districts at the time the order was made.

I have granted the application to intervene and considered the petitions and affidavits of such intervenors.

For the reasons above stated I am convinced that the Commissioner's order was a proper exercise of the discretionary powers vested in him by Statute and his determination was not arbitrary or capricious.

Application denied and petition dismissed upon the merits without costs.

Submit order accordingly.

Order of New York Supreme Court.

At a Special Term of the Supreme Court of the State of New York held in and for the County of Albany at the Court House in the City of Albany on the 22nd day of May 1959.

Present—Honorable William Deckelman,
Justice Presiding.

In the Matter of the Application
of
JOHN W. SOERGEL, et al.

Upon reading and filing the annexed petition of John W. Soergel, John R. Wheeler, Thomas Mafrici, Leo R. Priest, John D. Scheibel, Thomas Crandall, Carmen Ferrante, Bristol Laboratories, Inc., Oberdorfer Foundries, Inc., Lamson Corporation and Roth Bros. Metal Co. Inc., verified on the 14th and 24th days of June 1957, seeking to review the order of the Commissioner of Education laying out and designating Central School District No. 1 of the Towns of DeWitt, Manlius and Cicero, Onondaga County and Sullivan, Madison County, the affidavit of Raymond A. Hust, sworn to on June 24, 1957, the Order to show cause in the above entitled proceeding, signed by Honorable Isadore Bookstein, Justice of the Supreme Court, dated June 25, 1957, the Amended Order to show cause dated the same day, the stipulation by and between the attorneys for the parties to the above entitled proceeding striking the above entitled proceeding from the calendar subject to restoration by any party upon ten days notice, the notice restoring said proceeding to the calendar dated April 21, 1959, the answer of respondent, James E. Allen, Jr., as Commissioner of Education verified on the 21st day of May 1959 together with Exhibits 1 through 10 inclusive

returned with said answer, the affidavit of James E. Allen, Jr., sworn to on the 13th day of June 1959, the affidavit of Robert Edwards, sworn to on the 10th day of June 1959 and the affidavit of John M. Hastings, Jr., sworn to on the 15th day of June 1959, the affidavit of Marcella Scheibel, sworn to on the 17th day of June 1959, the affidavit of Francis Patsos, sworn to on the 17th day of June 1959, the notice of application on behalf of John Macken, Charles Tedesco, Marcella Scheibel, the Board of Trustees of Union Free School District No. 6 and Francis Patsos, Albert Trendell, Paul Wheelock and the Board of Trustees of Common School District No. 3 for an Order permitting said last named persons (hereinafter referred to as petitioners-intervenors) to intervene in this proceeding as petitioners, the affidavit of Stewart F. Hancock, Jr., sworn to on the 12th day of May 1959, the joint affidavit of Jack Macken, Charles Tedesco, Marcella Scheibel, Francis Patsos, Albert Trendell and Paul Wheelock, sworn to on the 12th day of May 1959, the petition of Jack Macken, Charles Tedesco, Marcella Scheibel, The Board of Trustees of Union Free School District No. 6, Town of DeWitt, County of Onondaga, State of New York, Francis Patsos, Albert Trendell, and Paul Wheelock and The Board of Trustees of Common School District No. 3, Town of DeWitt, County of Onondaga, State of New York, verified on the 12th day of May 1959, and all of the exhibits attached thereto, the affidavit of Francis Patsos, sworn to on the 12th day of May 1959, the affidavit of Jack Macken, sworn to on the 12th day of May 1959, the affidavit of Elizabeth M. Eastman, sworn to on the 21st day of May 1959, in opposition to said application to intervene and on all of the papers heretofore filed and proceedings heretofore had herein and, after hearing Hancock, Dorr, Ryan

& Shove, Esqs. (Stewart F. Hancock, Jr., Esq., of counsel), attorneys for petitioner and for proposed intervenors and Charles A. Brind, Esq. (Elizabeth M. Eastman, Esq., of counsel) on behalf of respondent, Commissioner of Education, and due deliberation having been had,

Now on motion of Hancock, Dorr, Ryan & Shove, attorneys for petitioners-intervenors, it is

ORDERED that the application of said petitioners-intervenors to intervene in the proceeding and to have their petition considered herein be and the same hereby is granted, and

On motion of Charles A. Brind, Jr., Esq., Attorney for respondent, it is

ORDERED that the petitions of the said petitioners and said petitioners-intervenors herein be and the same hereby are dismissed on the merits without costs.

Signed August 24, 1959

ENTER in Albany County

WM. DECKELMAN
J. S. C.

Opinion of Appellate Division.

In the Matter of JOHN W. SOERGEL et al., Petitioners, and Jack Macken et al., Intervening Petitioners, for the review and vacating or modification of an order granted and made by James E. Allen, as Commissioner of Education of the State of New York, dated June 10, 1957, purporting to lay out a Central School District to be known as Central School District No. 1 of the Towns of DeWitt, Manlius and Cicero, Onondaga County and Sullivan, Madison County.

Supreme Court, Appellate Division,
Third Department
March 18, 1960

Hancock, Dorr, Ryan & Shove, Syracuse, for appellants.

Charles A. Brind, Jr., Albany, for respondent Commissioner.

Before BERGAN, P. J., and COON, GIBSON, HERLIHY and REYNOLDS, JJ.

MEMORANDUM DECISION

Petitioners appeal from an order dismissing an Article 78 proceeding brought to review the determination of the Commissioner of Education which laid out and designated a central school district. The authority of the Commissioner is challenged generally and in particular that a special statute pertaining to School District No. 6 prohibits its inclusion in the proposal.

The Commissioner's authority for acts of centralization is contained in Article 37 of the Education Law, which includes Section 1801, and which provides in part as follows:

"§ 1801. Formation and changes of central school district

"1. The commissioner of education is hereby authorized and empowered to lay out central school dis-

tricts for the establishment of central schools * * * and to fix, determine and define the boundaries of said districts as hereinafter provided.

"2. * * * The Commissioner in laying out such central school districts and in fixing and defining the boundaries thereof shall include only territory of suitable size conveniently located for the attendance of pupils and having a sufficient number of pupils for the establishment of a central school."

[1] Such facts as a close vote on consolidation, increase in school taxes, inconvenience to pupils and other complaints from individuals, groups and school districts opposed to change have been before this court on many occasions. We have no control over the decision of the Commissioner as long as he carries out the laws as enacted by the Legislature. Matter of Board of Education of Union Free School District No. 3 of Town of Oyster Bay, Nassau County v. Allen, 6 App. Div. 2d 316, 177 N. Y. S. 2d 169, affirmed 6 N. Y. 2d 871, 188 N. Y. S. 2d 988.

Here, the Commissioner, acting within the framework of the law and within the authority vested in him, properly laid out the proposed central school district and the lower court correctly determined his acts were not arbitrary or capricious.

[2] School District No. 6 raises the further argument that a special statute forecloses the Commissioner from including it under the plan of consolidation. In the Laws of 1926 by Chapters 519, 2, and 626, a substantial part of this school district was annexed to the Syracuse City School District and after including provisions as to the payment of bonds, it provided:

"* * * The remainder of union free school district number six * * * not annexed to the city of Syracuse, shall remain separate and distinct school districts as now constituted *until changed according to law*. The

board of education of the city of Syracuse shall upon request grant permission to children residing in the part of such school districts not annexed, to attend schools under the care and control of the board without the payment of any tuition therefor." (Emphasis supplied.)

The petitioners contend that the phrase "until changed according to law" means that the school district remains as a separate entity until changed by an act of the Legislature.

The Commissioner concludes such acts have no such special meaning and do not govern or interfere with his right to centralize the district. The laws in 1926 relating to formation of central rural high schools were amended in 1944 to provide for central school districts such as here involved.

It seems evident that the Commissioner's decision is not changing the law — he has no such right — but is forming a new central school district, a right given to him by Section 1801 of the Education Law. His act does not interfere with payment of the bonded indebtedness or with the children to attend the City of Syracuse schools tuition free. To hold that the Education Law as to centralization is inapplicable to District No. 6 — under the circumstances herein — would be a narrow and unwarranted interpretation and implementation to the Laws of 1926 beyond its intended purpose. If need be, it could be further argued that the phrase "until changed according to law" was in fact changed by the 1944 amendment to the Education Law which gave to the Commissioner the right to organize central school districts such as here involved.

Order unanimously affirmed, without costs.

Order of Appellate Division.

At a Term of the Appellate Division, State of New York, held in and for the Third Judicial Department, in the City of Albany, New York, commencing on the 4th day of January, 1960.

Present: HON. FRANCIS BERGAN,
Presiding Justice.
HON. WILLIAM H. COON,
HON. JAMES GIBSON,
HON. J. CLARENCE HERLIHY,
HON. WALTER B. REYNOLDS,
Associate Justices.

In the Matter of the Application
of
JOHN W. SOERGEL, et al.

An application having been made by the petitioners above named to review the determination of the Commissioner of Education which laid out and designated Central School District No. 1 of the Towns of DeWitt, Manlius and Cicero, Onondaga County and Sullivan, Madison County, and said application having regularly come on to be held at a Special Term of the Supreme Court held in and for the County of Albany before the Honorable William Beckelman in that Court by an order dated August 24, 1959 having dismissed said application on the merits without costs and an appeal having been taken by said petitioners from said order of the Supreme Court and said appeal having been duly brought to argument at the above term;

NOW, on reading and filing the record of all proceedings heretofore had herein and after hearing Hancock, Dorr, Ryan & Shove, Esqs., attorneys for petitioners-appellants and petitioner-intervenor-appellants (Stewart F. Hancock, Jr., Esq. of counsel) and Charles A. Brind,

Jr., Esq., attorney for respondent (Elizabeth M. Eastman, Esq., of counsel) and due deliberation having been had and a decision thereon having been handed down on March 18, 1960, it is

ORDERED that the order appealed from be and the same hereby is unanimously affirmed without costs.

J. ROBERT LANNON
Clerk

Judgment of New York Court of Appeals.

In the Matter of JOHN W. SOERGEL et al., as Taxpayers of Union Free School District No. 6, Town of DeWitt, Appellants, and JACK MACKEN et al., as Taxpayers and Members of the Board of Trustees of Union Free School District No. 6, Town of DeWitt, et al., Intervening Petitioners-Appellants, against JAMES E. ALLEN, as Commissioner of Education of the State of New York, Respondent.

Argued November 17, 1960; decided January 5, 1961.

Matter of Soergel v. Allen, 10 A D 2d 767, affirmed.

APPEAL, on constitutional grounds, from an order of the Appellate Division of the Supreme Court in the Third Judicial Department, entered April 7, 1960, which unanimously affirmed an order of the Supreme Court at Special Term (William Deckelman, J.), entered in Albany County, which, in a proceeding under article 78 of the Civil Practice Act, dismissed petitions for an order annulling a determination of the Commissioner of Education of the State of New York organizing Central School District No. 1 of the Towns of DeWitt, Manlius and Cicero, Onondaga County, and Sullivan, Madison County. This district was

organized and laid out by the Commissioner of Education under the power given him by section 1801 *et seq.* of the Education Law following studies of the educational systems in the area. The new district included Union Free School District No. 6 and Common School District No. 3 of the Town of DeWitt and 13 others. Prior to June 10, 1957, when the Commissioner issued the order laying out and organizing the new district, petitions signed by almost 100% of the qualified voters of district No. 6 and district No. 3 opposing centralization were submitted to the Commissioner. The resolution of centralization was passed, by a vote of 2,731 in favor of, to 2,683 opposed, in a referendum in which all the qualified voters in the new school district were entitled to vote. In their petitions appellants, comprising taxpayers in school districts No. 6 and No. 3 and the Board of Trustees of both school districts, alleged that their school districts were in industrial and commercial areas where the number of children of school age was declining; that their school taxes were low; that if they were included in the new school district their taxes would be greatly increased; that the present educational facilities were excellent and adequate, and that, in the case of district No. 6, students were entitled to be educated in the schools of the City of Syracuse at no cost to the student or the taxpayer by virtue of chapters 518 and 626 of the Laws of 1926. These laws provided for annexation to the City of Syracuse of portions of former Union Free School District No. 6 located in the Village of Eastwood and in the Town of DeWitt. At that time the sole school in the district was also acquired by the City of Syracuse. The laws also provided that the remainder of district No. 6 not annexed to the City of Syracuse "shall remain separate and distinct school districts as now

constituted until changed according to law" and that the City of Syracuse, upon request, would grant permission to children residing in the unannexed portions of district No. 6 to attend its schools without payment of tuition therefor. In the Court of Appeals appellants taxpayers and Board of Trustees of district No. 6 argued that the Commissioner of Education lacked power to include district No. 6 in a new school district; that such inclusion could only be effected by an act of the Legislature because of chapters 518 and 626 of the Laws of 1926; that the Legislature did not delegate to the Commissioner of Education authority to change the provisions of such chapters of the laws, and that the interpretation of the statutes by the lower courts was unconstitutional and deprived the residents of district No. 6 of the equal protection of the laws and of their property without due process of law. All appellants argued that, since there were no unmet educational needs in their districts and there would be no improvement in the educational facilities therein by inclusion in the new district, the Commissioner of Education lacked authority to absorb their districts into a new one and that the organization of the new school district was unconstitutional and deprived appellants of their property without due process of law.

Stewart F. Hancock, Jr., Benjamin E. Shove and Stewart F. Hancock for appellants.

Charles A. Brind, John P. Jehu, Elizabeth M. Eastman and George B. Farrington for respondent.

Order affirmed, without costs; no opinion.

Concur: Chief Judge Desmond and Judges Dye, Fuld, Froessel, Van Voorhis, Burke and Foster.

Remittitur of New York Court of Appeals as Amended.

COURT OF APPEALS

STATE OF NEW YORK, SS:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 5th day of January in the year of our Lord one thousand nine hundred and sixty-one, before the Judges of said Court.

WITNESS,
The HON. CHARLES S. DESMOND,
Chief Judge, Presiding.

RAYMOND J. CANNON, Clerk.

Remittitur January 5, 1961

No. 237

In the Matter of John W. Soergel, & ors., &c., *Appellants*,
and
Jack Macken, & ors., &c.,
Intervenors-Appellants
for the review and vacating or modification of an order granted and made by James E. Allen, as Commissioner of Education of the State of New York, &c.,
Respondent

BE IT REMEMBERED, That on the 7th day of July in the year of our Lord one thousand nine hundred and sixty, John W. Soergel, & ors., &c., the appellants, and Jack Macken, & ors., &c., the intervenors-appellants in this cause, came here unto the Court of Appeals, by Hancock,

Dorr, Ryan & Shove, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And James E. Allen, as Commissioner of Education of the State of New York, the respondent — in said cause, afterwards appeared in said Court of Appeals by Charles A. Brind, Jr., his attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Stewart F. Hancock, Jr., of counsel for the appellants, and by Mr. Charles A. Brind, Jr., of counsel for the respondent —, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs. And thereafter a motion to amend the remittitur this remittitur is hereby amended by adding thereto the following: Upon the appeal herein their were presented and necessarily passed upon questions under the Constitution of the United States, as follows: Appellants contended that Chapters 518 and 626 of the Laws of 1926 and Article 37 of the Education Law of the State of New York as interpreted by the Commissioner of Education and construed by the Courts of this State denied them equal protection of the laws and deprived them of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. This Court held there was no such denial or deprivation.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be re-

mitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, without costs, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York

COURT OF APPEALS, CLERK'S OFFICE,)
Albany, January 5, 1961.)

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the
(SEAL) proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON
Clerk.

APPENDIX B.

TEXT OF LAWS, 1926, C. 518, C. 626.

CHAPTER 518

AN ACT to provide for extending the boundaries of the city of Syracuse by annexing thereto the territory comprised within the boundaries of the village of Eastwood by vote of the electors of such village and the consent of the mayor and common council of the city of Syracuse, to provide for the apportionment of school bonded indebtedness, the payment of village bonds and debts and the attendance at city schools of children residing in portions of school districts not annexed.

Became a law April 20, 1926, with the approval of the Governor. Passed by a two-thirds vote on emergency message.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Village of Eastwood annexed.

Section 1. Subject to the provisions of section seven of this act, all the territory comprised within the boundaries of the village of Eastwood in the county of Onondaga, as hereinafter described, is hereby annexed to and shall form a part of the city of Syracuse, namely

VILLAGE OF EASTWOOD

All that part of military lots numbers twenty-nine, forty, forty-one and forty-nine in the town of Dewitt, county of Onondaga and state of New York, bounded and described as follows: Beginning in the west line of military lot twenty-nine, three hundred and seventy-three and seventy-six one-hundredths feet north from the southwest corner thereof; thence south along the west line of military lots twenty-nine and forty, five thousand nine hundred and six and fifty-four one-hundredths feet to the south line

of the New York Central and Hudson River railroad lands; thence easterly along said south line of said railroad lands to a point in the prolongation south of the center line of Nichols street; thence southerly about five hundred and thirty-three feet continuing the direction of Nichols street to a monument in the blue line of the north blank of the former Erie canal; thence easterly one thousand four hundred and eighty-six and three one-hundredths feet along the blue line of the said Erie canal to a monument on the north bank of the said canal, thence northerly three hundred and four and sixty-five one-hundredths feet to a monument; thence easterly six hundred and twenty-seven and thirty-nine one-hundredths feet parallel with the blue line of the Erie canal to a monument and to the east line of military lot forty; thence northerly along the east line of said lot forty to the south line of the New York, West Shore and Buffalo railroad land; thence east along the south line of said railroad land one thousand four hundred and nineteen and sixty-one one-hundredths feet to a point in range with the center line of Boston Street; thence north in the direction of and along the said center line of Boston street to a point in range with the south line of lot one, block three thousand and ninety-five, if extended westerly; thence easterly along the south line of lot one, block three thousand and ninety-five, if extended and along the south line of block three thousand and ninety-five, and the prolongation of the same to the center line of Thompson road; thence northwest along the center line of Thompson road to a point opposite the north end of park A which point is in the extension of the north line of lot thirty, block three thousand and seventy-two; thence west in a straight line coinciding with the extension of the north line of lot thirty, block three thousand and seventy-

two to the northeast corner of said lot thirty; thence northerly along the easterly line of lot thirty-one of block three thousand and seventy-two to the northeast corner thereof; thence westerly along the northerly line of said lot thirty-one and its extension to the center line of L'Allemand street; thence southerly along the center line of said street to a point in the extension of the north line of lot thirty, block three thousand and seventy-two; thence westerly in the direction of the extended north line of said lot thirty to the extended center line of Hasbrouck street; thence northerly along the extended center line of Hasbrouck street to the north line of military lot forty-one; thence westerly along the north line of said lot to a point in the extended center line of Erickson street; thence northerly along the extended center line of Erickson street to a point three hundred and seventy-three and seventy-six one-hundredths feet north of the north line of military lot forty; thence westerly parallel to the north line of lot forty to the east line of the premises of the H. D. Dennison estate; thence northerly along the east line of said Dennison land to the northeast corner thereof; thence west along the north line of said Dennison land to the center line of Lamson street; thence northerly along the center of Lamson street and its extension thereof, to the southerly right-of-way line of the New York Central railroad; thence northwesterly along said right-of-way line to the west line of lands formerly owned by the Dennison estate; thence southerly along the westerly line of the lands of the said Dennison estate to a point eight hundred and forty-six and sixty-six one-hundredths feet northerly from the center line of James street; thence west parallel with the center line of James street eight hundred and thirty-nine and thirty-one one-hundredths feet to the center line of Midler

avenue; thence south along the center line of Midler avenue four hundred and seventy-two and nine-tenths feet to a point three hundred and seventy-three and seventy-six one-hundreds feet north of the south line of military lot twenty-nine; thence west parallel with south line of said lot twenty-nine, two thousand five hundred and forty-seven and fifty-five one-hundredths feet to the point of beginning.

To constitute part of 5th ward.

§ 2. The territory within the boundaries of such village, when annexed to the city of Syracuse shall constitute a part of the fifth ward of such city, and all the laws applicable to the city of Syracuse, not inconsistent with the provisions of this act shall apply to such territory. The municipal corporation of Eastwood shall cease and determine and all offices, positions and employments pertaining to the local government of such village are hereby abolished and the term of office of all officers elected or appointed in such village shall terminate. All unpaid taxes heretofore levied in such village and outstanding at the time this act takes effect shall be collected by the city of Syracuse, the same as though such village were a part of such city at the time such taxes were levied. The territory hereby annexed to the city of Syracuse shall cease to be a part of the union free school district number six and of union free school district number fourteen, respectively. The town of Dewitt, excluding the portion thereof hereby annexed to the city of Syracuse, shall remain a separate and distinct town. The remainder of union free school district number six, and of union free school district number fourteen not annexed to the city of Syracuse, shall remain separate and distinct school districts as now constituted until changed according to law. The board of education of the city of Syracuse shall upon request grant permis-

Village and officers terminated.

Unpaid taxes

Separation from union free school districts and town.

sion to children residing in the part of such school districts not annexed, to attend schools under the care and control of the board without the payment of any tuition therefor.

Bonded indebtedness of village and union free school districts.

§ 3. The bonded indebtedness, including principal and interest, of the village of Eastwood outstanding and unpaid shall be deemed the obligation of and be a charge upon and be paid by the city of Syracuse. The bonded indebtedness of union free school district number six and of union free school district number fourteen, including principal and interest, which exists at the time this act takes effect, shall be a charge upon and shall be paid [1] to the treasurer of each of such districts as the same shall become due and payable, in the same proportion to the whole bonded indebtedness of each such district as the assessed valuation of that portion of the district annexed bears to the whole valuation of such district, as shown by the last assessment roll of such school district.

Property and funds of village.

§ 4. All property, real and personal, belonging to the village of Eastwood shall, when such annexation takes place, belong to the city of Syracuse. All funds and sums of money held by the village of Eastwood or any officer thereof, shall be paid to the city of Syracuse and be received by such city in payment of the nineteen hundred and twenty-six city taxes of the inhabitants of such village to the city of Syracuse.

Boundaries; map.

§ 5. Within a reasonable time after such annexation, the city of Syracuse shall cause a survey to be made of the annexed territory, the boundaries of the same to be marked with monuments and a map of the city including the territory annexed to be made and filed in the Onondaga county clerk's office.

[1] "By the City of Syracuse" a part of the original bill, is omitted at this point.

Consent of mayor and common council.

§ 6. Notwithstanding the foregoing provisions of this act, the territory described in section one of this act, shall not become annexed to the city of Syracuse, nor shall any of the foregoing provisions of this act become operative, unless and until the consent of the city of Syracuse by its mayor or acting mayor and common council be obtained in the manner provided by law for the passage of local ordinances, such consent to be given or denied by such city authorities on or before the last Tuesday in June, nineteen hundred and twenty-six, and if such consent be given, unless and until the qualified voters residing in such annexed territory have decided in the affirmative by a majority vote of those voting, the following question, namely: "Shall the territory within the boundaries of the village of Eastwood be annexed to the city of Syracuse?" The board of trustee of the village of Eastwood shall call, in the manner provided by law, a special election of the qualified voters of such village to be held not later than the fourth Tuesday of July, nineteen hundred and twenty-six, at which such question shall be submitted. The trustees shall cause the necessary ballots to be prepared and the expense of the election shall be a charge against the city of Syracuse. At the close of the polls, the inspectors shall canvass the vote and make and certify returns thereof in triplicate, and shall cause one of such returns to be filed in the office of the village clerk, one in the office of the city clerk of the city of Syracuse and one copy in the office of the secretary of state, within ten days after such election. If a majority of the votes cast upon such election be in the affirmative, the territory comprised within the bounds of such village shall become upon such filing a part of the city of Syracuse.

Referendum election in territory to be annexed.

Ballots; expense.

Canvass; certification and filing of returns.

Effect of affirmative vote.

§ 7. This act shall take effect immediately.

CHAPTER 626

AN ACT to provide for extending the boundaries of the city of Syracuse by annexing a part of the town of Dewitt, to provide for the government of the annexed territory, the making of a survey, and a map of said territory, the payment of school bonded indebtedness and the apportionment of town bonded indebtedness.

Became a law April 23, 1926, with the approval of the Governor. Passed, by a two thirds vote on emergency message.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

Certain described territory annexed

Section 1. Subject to the provisions of section six of this act, all that part of the town of Dewitt included within the following boundaries shall form a part of the city of Syracuse, namely:

All that part of military lots twenty-nine and twenty-eight in the towns of Dewitt and Salina, county of Onondaga, and state of New York, bounded and described as follows:

Beginning in the west line of military lot number twenty-nine, three hundred and seventy-three and seventy-six one-hundredths feet from the southwest corner thereof; thence east parallel with the south line of said lot number twenty-nine, twenty-five hundred and forty-seven and fifty-five one-hundredths feet to the center line of Midler avenue, thence north along the center line of Midler avenue four hundred and seventy-two and nine one-hundredths feet; thence east parallel to the center line of

James street, eight hundred and thirty-nine and thirty-one one-hundredths feet to a point in the westerly line of lands formerly owned by the Denison estate, which point is eight hundred and forty-six and sixty-one one-hundredths feet northerly from the center line of James street; thence northerly along the westerly line of said land of Denison estate to the southerly right of way of the New York Central railroad; thence northwesterly along said railroad right of way to the easterly prolongation of the north line of the Lavonia and Highland park tracts; thence westerly along the said easterly prolongation of and the north line of, the Lavonia tract and Highland park tract to the east line of James street terrace tract; thence northerly along said east line of James street terrace tract to the north line of Oak court of the James street terrace tract; thence westerly along the north line of Oak court and the north line of lot number four hundred and eighty-three of James street terrace tract and the north line of lots six hundred and thirty-nine, seven hundred and four, seven hundred and thirty-nine and five hundred and eighty-eight of the James street terrace annex tract, and the north line of lots twenty-eight, thirty-three, eighty-four, eighty-nine, one hundred and twenty eight, one hundred and thirty-three and one hundred and seventy-two of the Wilson park tract, and the north line of lots seven hundred and twenty-four five hundred and ninety-four, five hundred and eighty-five. four hundred and fifty-one, four hundred and forty-two, three hundred and four, seven hundred and ninety five, two hundred and forty one, two hundred and thirty-two, one hundred and seventy-two, one hundred and sixty-three and ninety-seven of the Syracuse gardens tract and along the westerly prolongation of said lots in the Syracuse gardens

tract to the present easterly line of the city of Syracuse; thence southerly along said easterly city line to the north line of lots ten and eleven of the Melrose part * tract as filed in the county clerk's office of Onondaga county, June seventh, nineteen hundred and twelve; thence easterly along said lots ten and eleven to the westerly line of Amelia street; thence easterly across Amelia street, to the north line of lots seven, eight and nine of said Melrose park tract; thence easterly along the north line and prolongation thereof, of lots seven, eight and nine to the west line of plot "A," Gaister's homestead; thence southerly along said west line to the north line of the Salt Springs reservation; thence easterly along the north line of said reservation to the northeast corner thereof, and the southeast corner of military lot twenty-eight; thence southerly along the westerly line of military lot twenty-nine to the point of beginning.

To constitute part of 4th ward.

§ 2. The territory above described, when annexed to the city of Syracuse, shall constitute a part of the fourth ward of such city, and all the laws applicable to the city of Syracuse, not inconsistent herewith, shall apply to such territory.

Officers of town resident in such territory, continued.

Any person elected or appointed to any office in the town of Dewitt, even though a resident of the territory so annexed, shall continue to hold and shall exercise and perform the duties of his office in such town during the term for which elected or appointed and shall receive the salary, pay, fee or other emoluments of his office during his incumbency.

Unpaid taxes.

All unpaid taxes heretofore levied against said annexed territory and existing at the time this act takes effect, shall be due and payable and collected in all respects the same as if the law had not been enacted.

* So in original. [Evidently should be "park."]

Bonded indebtedness of school districts and of town.

§3. The bonded indebtedness of union free school district number six, including principal and interest, which exists at the time this act takes effect, shall be a charge upon and be paid by the city of Syracuse to the treasurer of such school district as the same shall become due and payable, in the same proportion to the whole bonded indebtedness of such school district as the assessed valuation of the portion annexed bears to the whole school district, as shown by the last assessment roll of such school district and the bonded indebtedness of the town of Dewitt, including principal and interest, which exists when this act takes effect, shall be a charge upon and shall be paid by the city of Syracuse to the supervisor of such town as the same shall become due and payable, in the same proportion to the whole bonded indebtedness of such town as the assessed valuation of the portion annexed bears to the whole assessed valuation of such town, as shown by the last assessment-roll of the town of Dewitt.

Property and funds of town and of school district.

§4. All property, real and personal, belonging to the town of Dewitt or to such school district, within the territory annexed shall belong to the city of Syracuse. All funds and sums of money held by the town of Dewitt or any officer thereof to the credit of such school district shall be paid to the city of Syracuse, in the same proportion as the assessed valuation of the portion annexed bears to the valuation of the whole school district, as shown by the last assessment-roll of such district, and be applied by such city in payment of charges against such school district. All funds and sums of money held by the town of Dewitt or any officer thereof to the credit of such town shall be paid to the city of Syracuse, in the same proportion, as the assessed valuation of the territory annexed

bears to the whole assessed valuation of such town, as shown by the last assessment-roll of the town of Dewitt, and by said city be duly received in payment of the nineteen hundred and twenty-six city taxes of the inhabitants of the territory annexed to the city of Syracuse.

Boundaries: map.

§ 5. Within a reasonable time after such annexation, the city of Syracuse shall cause a survey to be made of the annexed territory, the boundaries of the same to be marked with monuments and a map of the city including the territory annexed to be made and filed in the Onondaga county clerk's office.

Separation from town and school districts.

§ 6. The territory hereby annexed to the city of Syracuse shall cease to be a part of the town of Dewitt, or of the school districts in which such territory is now located. The town of Dewitt, excluding the portions thereof hereby annexed, shall remain a separate and distinct town. The remainder of union free school district number six, not annexed to the city of Syracuse, shall remain separate and distinct school districts as now constituted until changed according to law.

§ 7. This act shall take effect immediately.

N. Y. Education Law, Article 37, Section 1801.

1. The commissioner of education is hereby authorized and empowered to lay out central school districts for the establishment of central schools to give instructions in elementary or elementary and high school subjects and to fix, determine and define the boundaries of said districts as hereinafter provided.

2. The commissioner is authorized and empowered to make and enter in his office orders laying out territory in new central school districts or annexing to existing central school districts territory not contained within a city school district in a city having a population of more than ten thousand inhabitants, and not contained within a city school district having a full valuation of taxable real estate per public school pupil residing in the district of more than fifteen thousand dollars; provided, however, that no territory contained within a city school district in a city having a population of ten thousand inhabitants or less may be included in new central school districts or annexed to existing central school districts after July first, nineteen hundred fifty-five. The commissioner of education is authorized and empowered to make and enter in his office orders dissolving and annexing a central school district or districts to another central school district, pursuant to the provisions of subdivision two of section eighteen hundred two of this chapter. The commissioner in laying out such central school districts and on fixing and defining the boundaries thereof shall include only territory of suitable size conveniently located for the attendance of pupils and having a sufficient number of pupils for the establishment of a central school. The commissioner shall designate all central school districts by name, number, and such other description as he shall deem proper.

3. Within ten days after the making and entry of the order pursuant to this section, the commissioner shall transmit a certified copy thereof to the clerk, or in the event there is no clerk, to the trustee or trustees of each school district the territory of which is affected by said order. The clerk, the trustee or trustees, as the case may be, shall, within five days after receipt of such order, post a copy thereof in five conspicuous places in such district.

4. No central school district laid out by order of the commissioner shall operate as a central school district, not be entitled to receive the benefits of a central school district until it has been organized by the qualified voters of the district in accordance with the provisions of this article, provided, however, a central school district which was organized prior to April seventh, nineteen hundred forty-four, or pursuant to the provisions of this section and to which territory may be annexed shall not be required to again organize.

Constitution of the United States.

AMENDMENT XIV

Section 1. * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *.